

Attorney's Docket: 2002DE106
Serial No.: 10/510.086
Art Unit 1793
Response to Office Action of June 18, 2008

REMARKS/ARGUMENTS

The Office Action mailed June 16, 2008 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the claims to more clearly recite what Applicant believes to be the invention. In claims 1 and 2, Applicant has replaced the term "comprising" with the term "consisting of" and recite that the pigment preparation is a "pigment oil preparation." In claim 2, Applicant has further amended claim 2 to be consistent with claim 1 in the recited paraffin oil or vegetable oil or mixture thereof. Support for these amendments may be found in originally filed claims 1 and 2 and in Applicant's Specification on page 1, paragraph 5 and 6. Claims 10 and 11 were amended to be consistent with amended claims 1 and 2 in the recitation of "the pigment oil preparation." Support for this amendment may be found in Applicant's specification as mentioned hereinabove and in previously presented claims 10 and 11. It is believed that no new matter has been introduced by this amendment and that no additional search is required.

Applicant's invention relates to a method for coloring a fertilizer by applying a pigment oil preparation to the fertilizer, wherein the pigment oil preparation consists of 5-60 weight percent of at least one organic pigment, 40-95 weight percent of a paraffin oil or a vegetable oil or a mixture thereof, 0 to 10 weight percent of a dispersant, and 0 to 5 weight percent of at least one conventional additive. Applicant discovered that the inventive method of coloring fertilizers with Applicant's pigment oil preparation resulted in a strong color intensity, a high light fastness and easy handling (See page 5, lines 7-13) In addition, the inventive pigment oil preparation remained highly flowable in spite of heat aging for weeks, as shown in Applicant's specification at page 6, lines 12-13.

Claims 1-2 and 6-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and

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WO 97/19030 to Tilokavichai et al. and further in view of EP 0049777. The rejection of claim 1 as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. (hereinafter referred to as WO '649) and WO 97/19030 to Tilokavichai et al. (hereinafter referred to as WO '030) and further in view of EP 0049777 (hereinafter referred to as EP '777) should be withdrawn for the reason that WO '649 is silent on coloring any fertilizer particles, WO '030 is silent on coloring fertilizer with a pigment oil preparation, and WO '030 teaches away from an oil concentration greater than 0.5 wt-%, and WO '030 teaches that water soluble agents for coloring were not applicable for surface coloring and that oil-soluble coloring agents were found to be insufficient for coloring blends of fertilizers because of the differing absorbing abilities of components of those blends and the low hiding power of the organic layer, and EP '777 teaches away from Applicant's invention, and for the reason that references can be combined when references teach away from the invention, and for the reason that obviousness is not determined by the application of hindsight or retrospect with the knowledge of the Applicant's discovery. Rather it is determined as of the time of the invention, based solely on the knowledge disclosed by the prior art as a whole. The WO '649 publication discloses a method for coating fertilizer particles with an oil-based preparation of plate-like mineral particles or talc (See abstract and claim 1) for the purpose of protecting the fertilizer granules against wetting or caking (See page 1, lines 8-9). The reference is silent with respect to any method for coloring a fertilizer. It is also clear to anyone skilled in the art that the WO '649 publication is silent on the incorporation of any organic pigments in the disclosed oil-based preparations containing the plate-like mineral particles disclosed in the WO '649 publication. Based solely on the WO '649 disclosure there is no indication to anyone skilled in the art whether the further inclusion into the oil-based talc mixture of the WO '649 publication of any type of dye or pigment or any combination thereof would successfully color the fertilizer in the presence of the plate-like mineral particles to provide the strong color intensity, a high light fastness and easy handling of Applicant's invention. There is nothing in the

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WO '649 reference which anyone skilled in the art could relate to coloring fertilizer granules.

The WO '030 publication relates to the coating of fertilizer mixture particles with powdered metal oxides. The WO '030 publication discloses that different ways of coloring fertilizers revealed that water soluble agents for coloring were not applicable for surface coloring and that oil-soluble coloring agents were found to be insufficient for coloring blends of fertilizers because of the differing absorbing abilities of components of those blends and the low hiding power of the organic layer. The WO '030 publication discloses that using small particle size white silica particles was found to strongly adhere to the surface of all the fertilizer particles to provide a homogeneous appearance and that the further addition of small amounts of oil (up to 0.5 wt%) to the white silica reduced dust without making the final product sticky (See WO '030 at page 4, second paragraph). Therefore, although the WO '030 discloses coloring fertilizers with a pigment preparation which contains white silica and a very small amount of an oil, the reference teaches away from the use of an oil preparation having more than 0.5 wt% oil, and teaches away from organic pigments in favor of metal oxides such as white silica as a base for a second pigment such as black silica, grey silica, yellow iron oxide, red iron oxide or laca verde (thus, all metal oxides) to color fertilizer particles. Thus, the WO '030 publication teaches away from Applicant's invention wherein the color body is an organic pigment as claimed in claim 1 and the pigment oil preparation contains from 40 to 95 % oil. Prior art references must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention. Moreover, it is impermissible to pick and choose among individual parts of assorted prior art references as a mosaic to recreate a facsimile of the claimed invention.

Applicant has attached to this paper a new translation of EP 0049777 which Applicant believes is more clearly presented in the English Language than the machine translation supplied by the examiner in the paper mailed on 1/24/2008. The EP '777 publication discloses liquid dying agents or colorants which contain **"one or more soluble dyes, one or more finely divided pigments and solvents,**

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and optionally dispersing agents" (With reference to the new translation see page 2, 3rd paragraph and claim 1). The liquid dying agents of the '777 publication are used for various purposes, especially for coloring shoe polish and bees wax for candles. The pigments in the coloring agent can be organic or inorganic, but there is no teaching to use a pigment alone (without the one or more soluble dye also being present). The '777 Publication further discloses that the liquid colorant can be water-based or solvent-based (See page 4 of the translation in the 4th paragraph). In paragraph 5 on page 4 of the translation, it is disclosed that the choice of the solvent (polar or non-polar solvent) is determined by the use or purpose of the liquid dying agents. On page 5 in paragraph 3 of the new translation, the '777 Publication discloses that **aqueous(water)-based colorants are used to color fertilizer**. On page 5 of the new translation in paragraph 4, the '777 Publication discloses that organic or hydrophobic solvent based dying agents or liquid colorants are used to color shoe polish, waxes, etc. This is consistent with the teaching of the WO '030 reference cited hereinabove which teaches away from the use of water-soluble colorants for fertilizers. **There is no disclosure in EP '777 wherein an organic solvent-based liquid dying agent or a hydrophobic solvent-based liquid colorant is employed to color fertilizers. Further, there is no disclosure in the '777 Publication of a liquid dying agent which does not also contain one or more soluble dyes.** To be more specific, in the translation on page 5 in paragraph 3 the word "fertilizers" is mentioned only once, and is only associated with "aqueous mediums of all kinds, e.g., paper pulps, glues, wood impregnating agents, plant protection agents, fertilizers,... ". In the paragraph which follows, it is stated: "On the other hand for coloring organic solvents containing mediums of all kinds, e.g. waxes, plugs, lacquers." No fertilizers are mentioned with reference to a dying agent having an organic solvent. Furthermore, all of the working examples are silent of coloring a fertilizer. As a consequence, the skilled artisan would learn from the EP '777 Publication that coloring a fertilizer with an organic pigment would require a liquid aqueous medium, which is just the opposite of Applicant's present claims which exclude water and require a paraffin oil or vegetable oil. Thus, EP '777

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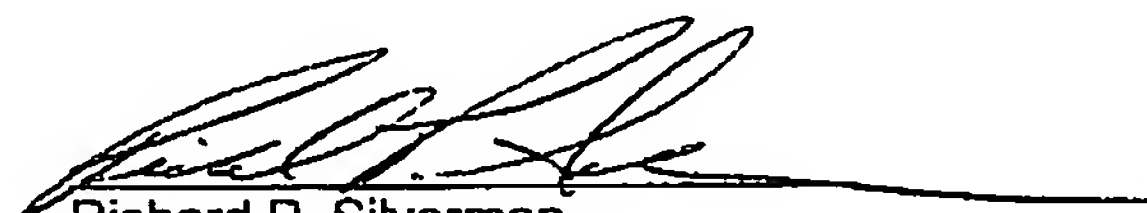
teaches away from the present invention and cannot reasonably be combined with WO '649 which is silent on the use of any color bodies such as a pigment or a dye and the WO '030 publication which teaches away from coloring fertilizers with either a water-soluble agent or with a preparation which contains more than 0.5 wt% oil. Therefore, the rejection of claim 1 as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. (WO '649) and WO 97/19030 to Tilokavichai et al. (WO '030) and further in view of EP 0049777 (EP '777) should be withdrawn for the reason that WO '649 is silent on coloring any fertilizer particles, WO '030 is silent on coloring fertilizer with a pigment oil preparation and teaches away from the invention as claimed, and EP '777 teaches away from Applicant's invention and any combination with the WO '030 publication, and for the reason that obviousness is not determined by the application of hindsight or retrospect with the knowledge of the Applicant's discovery.

The rejection of claims 2 and 6-13, under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) in view of WO 97/19030 to Tilokavichai et al. ('030 Paper), should be withdrawn for the reasons given in support of claim 1 from which they depend.

It is respectfully submitted that, in view of the above remarks, the rejections under §103 should be withdrawn and that this application is in a condition for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,


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